IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 32117 of 2004(W)

AGAINST THE ORDER DATED 18/08/2004 IN IA.236/1996 IN OS.7/1974 of SUB COURT, QUILANDY

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PETITIONERS:

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1. LAKSHMI AMMA, VAZHATT HOUSE,
   MUYIPOTH AMSOM DESOM, KOZHIKODE DISTRICT.

2. DAUGHTER VAZHATT PADMAVATHI AMMA,
   R/A. MAMBOYIL, MUYIPOTH AMSOM, DESOM,
   KOZHIKODE DISTRICT.

3. YOUNGER SISTER, VAZHATT SAROJINI AMMA,
   R/A. MAMBOYIL, MUYIPOTH AMSOM DESOM,
   KOZHIKODE DISTRICT.

4. BROTHER VAZHATT VEETTIL BALAKRISHNAN
   NAIR, R/A. MAMBOYIL, MUYIPOTH AMSOM, DESOM,
   KOZHIKODE DISTRICT.

5. YOUNGER BROTHER VAZHATT VEETTIL
   PRABHAKARAN, R/A. MAMBOYIL, MUYIPOTH AMSOM DESOM,
   KOZHIKODE DISTRICT.

6. BROTHER VAZHATT VEETTIL HARIDASAN,
   R/A. MAMBOYIL, MUYIPOTH AMSOM DESOM,
   KOZHIKODE DISTRICT.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.KALLADA K.SUKUMARAN
SMT.SATHYA SHREEPRIYA
SMTJ.N.NISHA

RESPONDENT:

MAMBOYIL VAZHATT NARAYANA KURUP,
R/A.RAYAROTHILLATH HOUSE, ERAMALA VILLAGE,
VADAKARA TALUK, KOZHIKOD DISTRICT.

BY ADV. SRI.R.PARTHASARATHY
SMT.S.LAKSHMY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.32117/04

APPENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF ORDER DT.19.2.02 IN CRP.1373/01 BEFORE THIS COURT.

EXT.P2 – TRUE COPY OF ORDER IN I.A.236/96 OF SUB COURT, KOYILANDY

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.32117 OF 2004

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DATED THIS THE 8TH JUNE, 2007

J U D G M E N T

Defendants 34 to 39 in a suit in which a preliminary decree was passed are the petitioners. They impugn Ext.P2 order issued by the learned Sub Judge directing the advocate commissioner already appointed, to file his report by 18.9.2004. The grievance which is very seriously urged before me by Sri.K.Lakshminarayanan, counsel for the petitioners is that it is in violation of the directions in Ext.P1 order of this Court in C.R.P.No.1373 of 2001 that the learned Sub Judge passed Ext.P2 order. Though there was a specific direction that the objections which had been filed by the petitioners to the final decree application should be considered before appointing advocate commissioner, the learned Sub Judge has passed the impugned order without considering the objections at all.

2. I have heard Sri.R.Parthasarathy, learned counsel for the respondent also.

3. There is nothing to indicate in Ext.P2 that the learned Sub Judge considered the objections filed by the petitioners to the final decree application, though there was a specific direction in that regard in Ext.P1 order of this Court. Under these circumstances, Ext.P2

order is set aside and the learned Sub Judge is directed to pass a fresh order on the final decree application, taking into account the direction in this judgment and the direction in Ext.P1 order. Fresh orders will be passed as directed above at the earliest and at any rate within one month of receiving copy of this judgment. It is clarified that the order in I.A.No.315 of 2002 allowing impleadment is not interfered with.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl